

REMARKS

Applicant's attorney wishes to thank Examiner Duffy for the courtesies extended during the interview of February 4, 2004.

Claims 23-33 currently appear in this application. The Office Action of December 19, 2003, has been carefully studied. These claims define novel and unobvious subject matter under Sections 102 and 103 of 35 U.S.C., and therefore should be allowed. Applicants respectfully request favorable reconsideration, entry of the present amendment, and formal allowance of the claims.

Rejections under 35 U.S.C. 112

Claims 3-5 and 19-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This rejection is respectfully traversed. Claims 3-5 and 19-21 have been replaced by new claims 23-33. It is believed new claims 23-33 make it clear that the antibodies bind to fungal hemolysin, that the active fragments are active fragments of the hemolysin, and that the labeled complex formed is detected.

Claim 22 is rejected under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly

point out and distinctly claim the subject matter which applicant regards as the invention.

This rejection is now moot, as claim 22 has been cancelled. None of new claims 23-33 contains the term "human/animal."

Art Rejections

Claims 2-3 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakaguchi et al. in view of Harlow et al.

This rejection is respectfully traversed. Sakaguchi et al. merely disclose that asp-hemolysin was measured in animal tissues after the spores were injected into mice. However, there is nothing in the cited references that teaches or suggests that one can detect a specific fungus by using antibodies to the hemolysin produced by that fungus, nor that blood, urine, or saliva could be tested for exposure. Likewise, there is nothing in the cited references that teaches or suggests that one can detect and identify a specific fungus in a building so that the building can be appropriately treated.

Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Sakaguchi et al. Claim 22 is also rejected under 35 U.S.C. 103(a) as being unpatentable over Sakaguchi et al. in view of Davis et al.

This rejection is respectfully traversed. Claim 22 has been cancelled and replaced by new claim 33. New claim 33 recites specifically that the test is species-specific, which is neither taught or suggested by any of the cited references.

Submitted herewith is a Petition to Make Special for this application.

In view of the above, it is respectfully submitted that the claims are now in condition for allowance, and favorable action thereon is earnestly solicited.

Respectfully submitted,

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